



COMMITTEE ON

TRANSPORTATION & INFRASTRUCTURE

SAM GRAVES, CHAIRMAN

H.R. 1 – Lower Energy Costs Act Improving Water Quality Certifications & American Energy Infrastructure

Purpose:

- H.R. 1 promotes the development of the Nation’s energy infrastructure by streamlining the permitting process under Section 401 of the *Clean Water Act (CWA)* and clarifying Section 401’s focus on water quality.

Summary:

- Section 401 of the *CWA* allows states or tribes to issue water quality certifications for any applicant seeking a Federal permit or license for activity that “may result in any discharge into navigable waters.”
- Projects requiring certification under Section 401 include those needing Federal permits under Sections 402 and 404 of the *CWA* and the *Rivers and Harbors Act*, as well as from the Federal Energy Regulatory Commission (FERC).
- In recent years, states, such as Washington, Oregon, and New York, have weaponized Section 401 to deny certification to projects such as a coal export terminal, a natural gas pipeline, and liquefied natural gas export facility for reasons outside Section 401’s scope.
- H.R. 1 amends Section 401 of the *CWA* and clarifies that the scope of Section 401 review is restricted to *CWA* water quality impacts and states may only issue final decisions based on water quality.
- The bill requires states to publish clear requirements for their water quality certifications and clarifies that states may only consider discharges as a result of the Federally permitted or licensed activity, not from other sources.
- In 2020, the Trump Administration issued the “Clean Water Act Section 401 Certification Rule,” which included many of these clarifications. However, the Biden Administration initiated a rulemaking to repeal and replace the 2020 rule.
- These provisions of H.R. 1 were initially introduced as separate legislation (H.R. 1152) on February 24, 2023, by Water Resources and Environment Subcommittee Chairman David Rouzer (R-NC) and Aviation Subcommittee Chairman Garret Graves (R-LA), as an original cosponsor. It was ordered reported out of the Committee on Transportation and Infrastructure on February 28, 2023, without amendment, by voice vote.

Staff Contact:

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